

**NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 7048  
AWARD NO. 361, (Case No. 361)**

**BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYES DIVISION – IBT RAIL CONFERENCE**

**vs**

**BNSF RAILWAY COMPANY**

William R. Miller, Chairman & Neutral Member  
Michelle McBride, Carrier Member  
Louis R. Below, Employee Member

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- 1. The Carrier violated the Agreement commencing October 16, 2020, when Claimant Vincent T. Harris (1100387) was assessed a Level S 30 Day Record Suspension for failure to restrict the speed of a train that requested to pass through Claimant’s Form b limits on Main Track 1 on July 29<sup>th</sup>, 2020, near MP 1114.0 at approximately 0200 hours on the Stockton Subdivision while working as the Employee in Charge of the Form b.**
- 2. As a consequence of the violation referred to in part 1, the Carrier shall remove this discipline with all rights unimpaired and pay for all wage loss including overtime (if applicable) commencing October 16, 2020, continuing forward and/or otherwise made whole.**
- 3. This claim was discussed in conference between the parties.”  
(Carrier File No. 14-20-0374) (Organization File No. 2419-SL13S1-2059)**

**FINDINGS:**

Public Law Board No. 7048, upon the whole record and all the evidence finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and that the Board has jurisdiction over the dispute herein; and that the parties to the dispute have participated in accordance to the Agreement that established the Board.

The facts indicate Claimant was a Foreman working as the Employee In Charge (EIC) on July 29, 2020, when Claimant allegedly failed to restrict the speed of a train that requested to pass through Claimant’s Form b limits on Main Track 1 near MP 1114.0 on the Stockton

Subdivision at approximately 0200 hours and because of that Claimant was directed to attend a formal Investigation on August 12, 2020, which was mutually postponed until October 6, 2020, concerning in pertinent part the following:

**“...for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to restrict the speed of a train that requested to pass through your Form b limits on Main track 1 on July 29<sup>th</sup>, 2020 near MP 1114.0 at approximately 0200 hours on the Stockton Subdivision while you were working as the Employee in Charge of the Form b.”**

On October 16, 2020, Claimant was notified that he had been found guilty as charged and was assessed a Level S 30 Day Record Suspension with a Three Year Review Period. Additionally, Claimant's Foreman, Assistant Foreman, and Flagging Rights were suspended for One Year.

It is the Organization's position that the record shows that Claimant never authorized BNSF 7458 to exceed 25 m.p.h. and no proof was offered that the train exceeded that speed. It concluded that the Carrier did not meet its burden of proof and it requested that the discipline be rescinded and the claim be sustained as presented.

It is the position of the Carrier that the claim is procedurally defective because it failed to identify the governing Agreement under which it was filed or any Rule that was allegedly violated. It asked that the claim be dismissed and/or denied without reviewing the merits.

Turning to the merits, the Carrier stated the record shows that Claimant failed to restrict the speed of a train that requested to pass through his Form b limits on Main Track 1 near MP 11140 on the Stockton Subdivision at approximately 0200 hours. It asserted that the voice recording of Claimant's conversation with the train, BNSF 7458, substantiated Claimant told the train to proceed through the work area at maximum speed, which was a violation of MWOR 12.2. Carrier further argued that after proving Claimant's guilt it appropriately disciplined Claimant. It asked that the discipline not be disturbed and the claim remain denied.

The Board has reviewed the transcript and record of evidence and is not persuaded by the Carrier's procedural argument. It is determined that the case will be resolved on its merits.

The question at issue in the instant case is whether or not the Claimant allowed train BNSF 7458 pass through Claimant's Form b limits at 25mph or at maximum speed. Claimant suggested that he only authorized the speed to be 25mph. However, the communication played on Page 11 of the Transcript stated the following:

**"Foreman Harris (Claimant): Employee in charge of Form B Bulletin 1797 on the Stockton Sub grants permission for the BNSF 7458 West past the red flag at Milepost 1114.0 without stopping, proceed through the limits at maximum authorized speed, Main Track 1, O-N-E, over.**

**BNSF 7458: Employee in charge of Form B Bulletin 1797 on the Stockton Sub grants permission for the BNSF 7458 West past the red flag at Milepost 1114.0 without stopping, proceed through the limits at maximum authorized speed, Main Track 1, O-N-E, over." (Underlining Board's emphasis)**

On Page 34, Claimant testified that he spoke to all of the workers at Milepost 1114.0 at the time of the incident and apologized to them for allowing BNSF 7458 to travel through their work area at the maximum speed rather than a restricted speed limit of 25 mph. The voice recording between Claimant and the train coupled with Claimant's admission of guilt provided substantial evidence at the Investigation that the Carrier met its burden of proof that Claimant was guilty as charged.

The only issue remaining is whether the discipline was appropriate. At the time of the incident Claimant had approximately 25 years of service. Claimant's violation was of a serious nature and the discipline assessed was in accordance with the Carrier's Policy for Employee Performance Accountability (PEPA). The discipline was appropriate and will not be disturbed and the claim will remain denied because it was not contrary to PEPA, nor was it arbitrary, excessive or capricious.

**AWARD**

Claim denied.



William R. Miller, Chairman & Neutral Member



Michelle McBride, Carrier Member



Louis R. Below, Employee Member

AwardDate: March 25, 2022